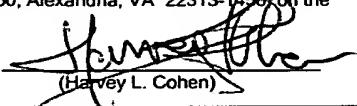


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Dated: December 11, 2003 Signature: 

(Harvey L. Cohen)

Docket No.: LONGWO 3.0-043

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Hartnett et al.

Application No.: 09/732,820

Filed: December 8, 2000

For: MOLDED OBJECTS

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: Group Art Unit: 1713
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: Examiner: P. Mulcahy
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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE

Dear Sir:

This is a response to the Official Action mailed September 26, 2003, in which the pending claims 1-3, 5-8, 10-12, 14-17, 19, 20 and 22-30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Oshima et al.*, U.S. Patent 5,532,068 (hereinafter "*Oshima*").

To briefly review, the present invention is directed to a mixture of synthetic polymers, fillers and vulcanizing agents designed to achieve specific characteristics in molded objects prepared from the resulting composition. The invention distinguishes itself from the prior art in that the specific polymers, fillers and other components are selected from the myriad of such materials generally available in the art in order to achieve specific advantages and characteristics not previously described. In particular, the resulting molded

objects not only have the look and feel of, e.g., natural terracotta, but also have enhanced fracture resistance, particularly at low temperatures. Consequently, a planting pot prepared from the composition is less likely to fracture during handling and use and less likely to fracture if left exposed to the elements during the winter months. Additionally, unlike plastic pots merely having clay-like coloration, pots made from the instantly claimed compositions have the "feel" as well as the "look" of natural products, but with advantages as described.

Turning now to the art rejection of record, the above-identified claims are rejected as being obvious in view of *Oshima*. In explaining the basis for the rejection (page 2 and continuing to page 3 of the Office Action), the Examiner states that *Oshima* "shows resin composite compositions which are based upon Applicants' instantly claimed resin components." (See column 2.) The instantly claimed fillers are said to be shown at column 4, lines 13+. The Examiner maintains that the fillers of *Oshima* "read on Applicants' instantly claimed colorants and, as such, these ingredients are seen to render obvious both ingredients B and C as claimed." Furthermore, the Examiner states that the vulcanizing agent is shown at column 4, lines 1+ of the reference. The Examiner states "Odor masking agents are rendered obvious by the incorporation of the plasticizer compounds which are seen to be aromatic compounds. As such, these ingredients render obvious the instantly claimed functional ingredients." Finally, the Examiner states "Applicants' claim language which identifies the texture and/or look or feel of the molded articles so as to resemble clay or terra cotta are seen to be rendered obvious by this patent. It is questionable just as to how limiting these requirements are in that these are subjective properties and one of ordinary skill in the art would consider articles formulated from the

resin compositions as shown in the prior art as having the look or feel of clay or terra cotta." This rejection is respectfully traversed.

Briefly, *Oshima* is directed to a resin composite composition for use as a material for a packing, a sealing material, a gasket or the like to maintain airtightness of an automobile, an electrical equipment, a building, etc. (column 1, lines 14-18). The gasket composite of *Oshima* is a mixture of a hard chlorinated vinyl chloride resin and a soft resin composition. The soft resin composition consists essentially of a vinyl chloride resin, a defined rubber material and a plasticizer. The soft resin composition can further contain a crosslinking or vulcanizing agent and a filler. (See, e.g., claims 1-6.)

It is not an insignificant distinction that the disclosure of *Oshima* is directed to a gasket composition whereas the claims of the present invention are directed to a wholly different application, specifically a mixture that upon vulcanization has the "look and feel" of natural clay and is used for producing objects such as planting pots. This distinction should not be disregarded since one skilled in the art of molding compositions used for preparing clay-like objects would not look to the art of gasket compositions as a relevant teaching and vice versa. For example, the performance characteristics of a gasket, such as compression-set and sealing properties, are not relevant to a molded object such as a planting pot, and the look and feel of a pot is not relevant to a gasket. In other words, although *Oshima* is directed to a mixture of various plastics and rubber materials in combination with fillers and plasticizers, is not directed to the field of art to which the present invention is concerned. It is respectfully suggested that *Oshima*, overall, is non-analogous art because the subject matter with which it deals would not

logically have commended itself to the present inventors' attention in considering their problem. Even if there is overlap in the USPTO search classification, differences in structure and function of the inventions carry far greater weight. (See MPEP 2141.01(a)).

Referring specifically to column 2 of the reference, the Examiner states that *Oshima* shows resin composite compositions which are based upon Applicants' instantly claimed resin components. However, referring to the portion cited, it will be seen that *Oshima* requires the use of a "chlorinated vinyl chloride resin as the hard resin for the resin composite of the present invention." (column 2, lines 1-3) Such a material is distinguished by *Oshima* from "a vinyl chloride resin" which is used to prepare the hard resin by chlorination as described at column 2, lines 1-62. Furthermore, the vinyl chloride itself is described as a component of the "soft resin composition." (column 2, lines 63-64) In other words, a chlorinated vinyl chloride resin is distinguished from a vinyl chloride resin in *Oshima* (as well as in the art). While the polymers of the soft resin composition of *Oshima* bear some resemblance to the presently claimed composition, the overall polymeric composition of *Oshima* differs significantly from that claimed herein. There is no basis to pick and choose among the disclosures of *Oshima* nor to gloss over distinguishing characteristics in order to arrive at Applicants' composition.

The Examiner further refers to the fillers of *Oshima* as rendering obvious the instantly claimed colorants and fillers of the present invention, ingredients B and C as claimed. In doing so, the Examiner refers to *Oshima* at column 4, lines 13+. However, closer examination of the cited portion of the reference shows that the fillers disclosed therein include carbon black, a material particularly suitable for use in a gasket, but totally unsuitable for use in the present invention

in which the stated objective is to produce a composition having the look and feel of terra cotta or natural clay. This is further evidence of the differences between the reference and the present invention.

Significantly, the Examiner also states that the fillers of the reference read on the claimed colorants of the present invention. With all due respect, there is no basis in the reference for the Examiner to draw such a conclusion. In particular, the reference merely recites a list of filler materials including, as mentioned, carbon black and various mineral fillers. Such materials are said to be useful in a range of "from 10 to 200 parts by weight" (column 4, line 23). In contrast, Applicants' claims include separately identifiable categories of a mineral filler in a range of from about 150 phr to about 500 phr, and a pigment or colorant in an amount from about 0.1 phr to about 10 phr. (See claim 1) There is nothing in *Oshima* to suggest the incorporation of a small quantity of a colorant or pigment unless one reads into the use of the carbon black filler that *Oshima* intended to color its product black, which again is distinguished from the present invention. Similarly, the only other characteristic of a filler recited in *Oshima* is that of "white carbon" (column 4, line 18), also irrelevant to the coloration in the present invention. Consequently, it will be seen that the reference cannot render obvious the instant claims directed to a composition having the "look" of natural clay since, as the Examiner suggests, "one of ordinary skill in the art would consider articles formulated from the resin compositions as shown" in *Oshima* as not having the look of natural clay or terra cotta since there is no teaching or suggestion to use the disclosed filler components to achieve such a result, even if it were possible to do so using the disclosed materials.

The Examiner asserts that odor masking agents are rendered obvious by the incorporation in *Oshima* of plasticizer compounds as disclosed at column 3, beginning at line 45. These plasticizer compounds are described by *Oshima* as being, for example, a phthalic acid ester such as di-2-ethylhexyl phthalate. Phthalate esters do indeed include an aromatic ring in their structure. However, the Examiner misapprehends the meaning of the word "aromatic" with regard to an organic chemistry molecule as compared to an odor masking agent of the present invention in which the word "aromatic" would be understood by one skilled in the art to refer to the quality of its aroma or smell. In particular, the Examiner is invited to review the present application beginning at paragraph [0023] in which various odor masking agents are described. Such materials would never be confused by one skilled in the art with the plasticizers of *Oshima*. Additionally, Applicants describe the use of a plasticizer beginning at paragraph [0024], such material being described as useful for modifying the handling and processing characteristics of the mixture and facilitating dispersion of the high concentration of mineral fillers used. If the Examiner means to suggest that the incidental odor of any of the plasticizers function as "odor masking agents", then the Examiner is asked to provide suitable support in *Oshima* for not only this characteristic, but also that *Oshima* taught that the plasticizers should be used for that purpose, and that the resulting odor would be pleasing or mask the odor of the vulcanized composition.

Rather than rendering the present application obvious, it is clear from a careful reading of *Oshima* that the present invention is clearly distinguished from the reference.

Finally, it is noted that the Examiner questions just how limiting the requirements regarding the look and feel of molded articles of the present invention to resemble clay or terra cotta are, because they are subjective properties. It is not clear on what basis the Examiner questions such limitations, since these straightforward qualities should be readily understood by one skilled in the art and therefor would be clearly distinguishable from, e.g., a molded gasket that has a different appearance. In particular, it is observed that the only compositions exemplified by *Oshima* (Table 1) were based on calcium carbonate, a white material, as the sole filler material, and there is no mention of resulting product coloration (although one could expect it to be white or off-white, depending on filler loading). Merely because the limitations are subjective in nature is not a sufficient basis to disregard them, and the Examiner does not identify anything in *Oshima* that would render such limitations obvious to one skilled in the art based on a reading of the reference.

Withdrawal of the rejection under 35 U.S.C. 103(a) is respectfully requested in view of the analysis presented above.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

Application No.: 09/732,820

Docket No.: LONGWO 3.0-043

If there are any additional charges in connection with this response, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: December 11, 2003

Respectfully submitted,

By 

Harvey L. Cohen

Registration No.: 28,365

LERNER, DAVID, LITTENBERG,

KRUMHOLZ & MENTLIK, LLP

600 South Avenue West

Westfield, New Jersey 07090

(908) 654-5000

Attorney for Applicant

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